

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1240**

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### Introduced by Assembly Member Logue

February 18, 2011

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An act to amend Section ~~17207~~ 17941 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as amended, Logue. ~~Personal income taxation: disaster loss.~~ *Minimum franchise tax: small businesses.*

*Existing law, generally, imposes a minimum franchise tax of \$800, except as provided, on every limited liability company registered, qualified to transact business, or doing business in this state, as specified.*

*This bill would, instead, for a limited liability company that is a small business, as defined, impose a minimum franchise tax of \$100.*

*This bill would take effect immediately as a tax levy.*

~~The Personal Income Tax Law provides for the carryover to specified taxable years of specified losses sustained as a result of certain disasters occurring in California in an area determined by the President of the United States to warrant specified federal assistance, or proclaimed by the Governor to be in a state of emergency.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 17941 of the Revenue and Taxation Code*  
2     *is amended to read:*

3     17941. (a) For each taxable year beginning on or after January  
4     1, 1997, a limited liability company doing business in this state  
5     (as defined in Section 23101) shall pay annually to this state a tax  
6     for the privilege of doing business in this state in an amount equal  
7     to the applicable amount specified in paragraph (1) of subdivision  
8     (d) of Section 23153 for the taxable year.

9     (b) (1) In addition to any limited liability company that is doing  
10    business in this state and is therefore subject to the tax imposed  
11    by subdivision (a), for each taxable year beginning on or after  
12    January 1, 1997, a limited liability company shall pay annually  
13    the tax prescribed in subdivision (a) if articles of organization have  
14    been accepted, or a certificate of registration has been issued, by  
15    the office of the Secretary of State. The tax shall be paid for each  
16    taxable year, or part thereof, until a certificate of cancellation of  
17    registration or of articles of organization is filed on behalf of the  
18    limited liability company with the office of the Secretary of State.

19    (2) If a taxpayer files a return with the Franchise Tax Board that  
20    is designated as its final return, the Franchise Tax Board shall  
21    notify the taxpayer that the annual tax shall continue to be due  
22    annually until a certificate of cancellation is filed with the Secretary  
23    of State pursuant to Section 17356 or 17455 of the Corporations  
24    Code.

25    (c) The tax assessed under this section shall be due and payable  
26    on or before the 15th day of the fourth month of the taxable year.

27    (d) For purposes of this section, “limited liability company”  
28    means an organization, other than a limited liability company that  
29    is exempt from the tax and fees imposed under this chapter  
30    pursuant to Section 23701h or Section 23701x, that is formed by  
31    one or more persons under the law of this state, any other country,  
32    or any other state, as a “limited liability company” and that is not  
33    taxable as a corporation for California tax purposes.

34    (e) Notwithstanding anything in this section to the contrary, if  
35    the office of the Secretary of State files a certificate of cancellation  
36    pursuant to Section 17350.5 of the Corporations Code for any  
37    limited liability company, then paragraph (1) of subdivision (f) of  
38    Section 23153 shall apply to that limited liability company as if

the limited liability company were properly treated as a corporation for that limited purpose only, and paragraph (2) of subdivision (f) of Section 23153 shall not apply. Nothing in this subdivision entitles a limited liability company to receive a reimbursement for any annual taxes or fees already paid.

(f) (1) Notwithstanding any provision of this section to the contrary, a limited liability company that is a small business solely owned by a deployed member of the United States Armed Forces shall not be subject to the tax imposed under this section for any taxable year the owner is deployed and the limited liability company operates at a loss or ceases operation.

(2) The Franchise Tax Board may promulgate regulations as necessary or appropriate to carry out the purposes of this subdivision, including a definition for “ceases operation.”

(3) For the purposes of this subdivision, all of the following definitions apply:

(A) “Deployed” means being called to active duty or active service during a period when a Presidential Executive order specifies that the United States is engaged in combat or homeland defense. “Deployed” does not include either of the following:

- (i) Temporary duty for the sole purpose of training or processing.
- (ii) A permanent change of station.

(B) “Operates at a loss” means a limited liability company’s expenses exceed its receipts.

(C) “Small business” means a limited liability company with total income from all sources derived from, or attributable, to the state of two hundred fifty thousand dollars (\$250,000) or less.

(4) This subdivision shall become inoperative for taxable years beginning on or after January 1, 2018.

*(g) Notwithstanding any other law, for each taxable year beginning on or after January 1, 2011, a small business as defined in subparagraph (C) of paragraph (3) of subdivision (f) shall pay a minimum franchise tax of one hundred dollars (\$100).*

*SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.*

~~SECTION 1. Section 17207 of the Revenue and Taxation Code is amended to read:~~

~~17207. (a) An excess disaster loss, as defined in subdivision (e), shall be carried to other taxable years as provided in~~

- 1 subdivision (b), with respect to losses resulting from any of the  
2 following disasters:
- 3 (1) ~~Forest fire, or any other related casualty occurring in 1985~~  
4 ~~in California.~~
- 5 (2) ~~Storm, flooding, or any other related casualty occurring in~~  
6 ~~1986 in California.~~
- 7 (3) ~~Any loss sustained during 1987 as a result of a forest fire,~~  
8 ~~or any other related casualty.~~
- 9 (4) ~~Earthquake, aftershock, or any other related casualty~~  
10 ~~occurring in 1987 in California.~~
- 11 (5) ~~Earthquake, aftershock, or any other related casualty~~  
12 ~~occurring in 1989 in California.~~
- 13 (6) ~~Any loss sustained during 1990 as a result of fire, or any~~  
14 ~~other related casualty in California.~~
- 15 (7) ~~Any loss sustained as a result of the Oakland/Berkeley Fire~~  
16 ~~of 1991, or any other related casualty.~~
- 17 (8) ~~Any loss sustained as a result of storm, flooding, or any~~  
18 ~~other related casualty occurring in February 1992 in California.~~
- 19 (9) ~~Earthquake, aftershock, or any other related casualty~~  
20 ~~occurring in April 1992 in the County of Humboldt.~~
- 21 (10) ~~Riots, arson, or any other related casualty occurring in~~  
22 ~~April or May 1992 in California.~~
- 23 (11) ~~Any loss sustained as a result of the earthquakes that~~  
24 ~~occurred in the County of San Bernardino in June and July of 1992,~~  
25 ~~or any other related casualty.~~
- 26 (12) ~~Any loss sustained as a result of the Fountain Fire that~~  
27 ~~occurred in the County of Shasta, or as a result of either of the~~  
28 ~~fires in the Counties of Calaveras and Trinity that occurred in~~  
29 ~~August 1992, or any other related casualty.~~
- 30 (13) ~~Any loss sustained as a result of storm, flooding, or any~~  
31 ~~other related casualty that occurred in the Counties of Alpine,~~  
32 ~~Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles,~~  
33 ~~Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas,~~  
34 ~~Riverside, San Bernardino, San Diego, Santa Barbara, Sierra,~~  
35 ~~Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of~~  
36 ~~Fillmore in January 1993.~~
- 37 (14) ~~Any loss sustained as a result of a fire that occurred in the~~  
38 ~~Counties of Los Angeles, Orange, Riverside, San Bernardino, San~~  
39 ~~Diego, and Ventura, during October or November of 1993, or any~~  
40 ~~other related casualty.~~

1     ~~(15) Any loss sustained as a result of the earthquake, aftershocks,~~  
2     ~~or any other related casualty that occurred in the Counties of Los~~  
3     ~~Angeles, Orange, and Ventura on or after January 17, 1994.~~

4     ~~(16) Any loss sustained as a result of a fire that occurred in the~~  
5     ~~County of San Luis Obispo during August of 1994, or any other~~  
6     ~~related casualty.~~

7     ~~(17) Any loss sustained as a result of the storms or flooding~~  
8     ~~occurring in 1995, or any other related casualty, sustained in any~~  
9     ~~county of this state subject to a disaster declaration with respect~~  
10    ~~to the storms and flooding.~~

11    ~~(18) Any loss sustained as a result of the storms or flooding~~  
12    ~~occurring in December 1996 or January 1997, or any related~~  
13    ~~casualty, sustained in any county of this state subject to a disaster~~  
14    ~~declaration with respect to the storms or flooding.~~

15    ~~(19) Any loss sustained as a result of the storms or flooding~~  
16    ~~occurring in February 1998, or any related casualty, sustained in~~  
17    ~~any county of this state subject to a disaster declaration with respect~~  
18    ~~to the storms or flooding.~~

19    ~~(20) Any loss sustained as a result of a freeze occurring in the~~  
20    ~~winter of 1998–99, or any related casualty, sustained in any county~~  
21    ~~of this state subject to a disaster declaration with respect to the~~  
22    ~~freeze.~~

23    ~~(21) Any loss sustained as a result of an earthquake occurring~~  
24    ~~in September 2000, that was included in the Governor's~~  
25    ~~proclamation of a state of emergency for the County of Napa.~~

26    ~~(22) Any loss sustained as a result of the Middle River levee~~  
27    ~~break in San Joaquin County occurring in June 2004.~~

28    ~~(23) Any losses sustained as a result of the fires that occurred~~  
29    ~~in the Counties of Los Angeles, Riverside, San Bernardino, San~~  
30    ~~Diego, and Ventura in October and November 2003, or as a result~~  
31    ~~of floods, mudflows, and debris flows, directly related to fires.~~

32    ~~(24) Any losses sustained in the Counties of Santa Barbara and~~  
33    ~~San Luis Obispo as a result of the San Simeon earthquake,~~  
34    ~~aftershocks, and any other related casualties.~~

35    ~~(25) Any losses sustained as a result of the wildfires that~~  
36    ~~occurred in Shasta County, commencing August 11, 2004, and~~  
37    ~~any other related casualty.~~

38    ~~(26) Any loss sustained in the Counties of Kern, Los Angeles,~~  
39    ~~Orange, Riverside, San Bernardino, San Diego, Santa Barbara,~~  
40    ~~and Ventura as a result of the severe rainstorms, related flooding~~

~~1 and slides, and any other related casualties, that occurred in  
2 December 2004, January 2005, February 2005, March 2005, or  
3 June 2005.~~

~~4 (27) Any loss sustained in the Counties of Alameda, Alpine,  
5 Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El  
6 Dorado, Fresno, Humboldt, Kings, Lake, Lassen, Madera, Marin,  
7 Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer,  
8 Plumas, Sacramento, San Joaquin, San Luis Obispo, San Mateo,  
9 Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus,  
10 Sutter, Trinity, Tulare, Tuolumne, Yolo, and Yuba as a result of  
11 the severe rainstorms, related flooding and slides, and any other  
12 related casualties, that occurred in December 2005, January 2006,  
13 March 2006, or April 2006.~~

~~14 (28) Any loss sustained in the County of San Bernardino as a  
15 result of the wildfires that occurred in July 2006.~~

~~16 (29) Any loss sustained in the Counties of Riverside and Ventura  
17 as a result of wildfires that occurred during the 2006 calendar year.~~

~~18 (30) Any loss sustained in the Counties of El Dorado, Fresno,  
19 Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San  
20 Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa  
21 Clara, Stanislaus, Tulare, Ventura, and Yuba that were the subject  
22 of the Governor's proclamations of a state of emergency for the  
23 severe freezing conditions that occurred in January 2007.~~

~~24 (31) Any loss sustained in the County of El Dorado as a result  
25 of wildfires that occurred in June 2007.~~

~~26 (32) Any loss sustained in the Counties of Santa Barbara and  
27 Ventura as a result of the Zaca Fire that occurred during the 2007  
28 calendar year.~~

~~29 (33) Any loss sustained in the County of Inyo as a result of  
30 wildfires that commenced in July 2007.~~

~~31 (34) Any loss sustained in the Counties of Los Angeles, Orange,  
32 Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura  
33 as a result of wildfires that occurred during the 2007 calendar year  
34 that were the subject of the Governor's disaster proclamations of  
35 September 15, 2007, and October 21, 2007.~~

~~36 (35) Any loss sustained in the County of Riverside as a result  
37 of extremely strong and damaging winds that occurred in October  
38 2007.~~

~~39 (36) Any loss sustained in the Counties of Butte, Kern,  
40 Mariposa, Mendocino, Monterey, Plumas, Santa Clara, Santa Cruz,~~

1 Shasta, and Trinity as a result of wildfires that occurred in May or  
2 June 2008 that were the subject of the Governor's proclamations  
3 of a state of emergency.

4 (37) Any loss sustained in the County of Santa Barbara as a  
5 result of wildfires that occurred in July 2008.

6 (38) Any loss sustained in the County of Inyo as a result of the  
7 severe rainstorms, related flooding and landslides, and any other  
8 related casualties, that occurred in July 2008.

9 (39) Any loss sustained in the County of Humboldt as a result  
10 of wildfires that commenced in May 2008.

11 (40) Any loss sustained in the County of Santa Barbara as a  
12 result of wildfires that commenced in November 2008.

13 (41) Any loss sustained in the Counties of Los Angeles and  
14 Ventura as a result of wildfires that commenced in October 2008  
15 or November 2008 that were the subject of the Governor's  
16 proclamations of a state of emergency.

17 (42) Any loss sustained in the Counties of Orange, Riverside,  
18 and San Bernardino as a result of wildfires that commenced in  
19 November 2008.

20 (43) Any loss sustained in the County of Santa Barbara as a  
21 result of wildfires that commenced in May 2009.

22 (b) (1) In the case of any loss allowed under Section 165(e) of  
23 the Internal Revenue Code, relating to limitation of losses of  
24 individuals, any excess disaster loss shall be carried forward to  
25 each of the five taxable years following the taxable year for which  
26 the loss is claimed. However, if there is any excess disaster loss  
27 remaining after the five-year period, then the applicable percentage,  
28 as set forth in paragraph (1) of subdivision (b) of Section 17276,  
29 of that excess disaster loss shall be carried forward to each of the  
30 next 10 taxable years.

31 (2) The entire amount of any excess disaster loss as defined in  
32 subdivision (c) shall be carried to the earliest of the taxable years  
33 to which, by reason of subdivision (b), the loss may be carried.  
34 The portion of the loss which shall be carried to each of the other  
35 taxable years shall be the excess, if any, of the amount of excess  
36 disaster loss over the sum of the adjusted taxable income for each  
37 of the prior taxable years to which that excess disaster loss is  
38 carried.

39 (c) "Excess disaster loss" means a disaster loss computed  
40 pursuant to Section 165 of the Internal Revenue Code which

1 exceeds the adjusted taxable income of the year of loss or, if the  
2 election under Section 165(i) of the Internal Revenue Code is  
3 made, the adjusted taxable income of the year preceding the loss.

4 (d) The provisions of this section and Section 165(i) of the  
5 Internal Revenue Code shall be applicable to any of the losses  
6 listed in subdivision (a) sustained in any county or city in this state  
7 which was proclaimed by the Governor to be in a state of disaster.

8 (e) Losses allowable under this section may not be taken into  
9 account in computing a net operating loss deduction under Section  
10 172 of the Internal Revenue Code.

11 (f) For purposes of this section, “adjusted taxable income” shall  
12 be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

13 (g) For losses described in paragraphs (15) to (43), inclusive,  
14 of subdivision (a), the election under Section 165(i) of the Internal  
15 Revenue Code may be made on a return or amended return filed  
16 on or before the due date of the return (determined with regard to  
17 extension) for the taxable year in which the disaster occurred.